STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 22, 2007
v	No. 268944 Kent Circuit Court
ANTHONY SHAWN TAYLOR, Defendant-Appellant.	LC No. 05-003812-FH

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant was convicted of possession with intent to deliver 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii). He was sentenced as a repeat drug offender, MCL 333.7413(2), and as an habitual offender, fourth offense, MCL 769.12, to 8 to 40 years' imprisonment. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that trial counsel was ineffective for failing to file a motion to suppress evidence obtained during the execution of a search warrant. Because defendant did not raise the ineffective assistance of counsel issue in the trial court, our review is limited to mistakes apparent from the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). To establish prejudice, defendant must show that there was a reasonable probability that, but for his counsel's error, the result of the proceedings would have been different. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

Defendant argues that the affidavit offered in support of the request for the search warrant was insufficient to find probable cause to search. We disagree.

Probable cause to search must exist at the time a warrant is issued. *People v Stumpf*, 196 Mich App 218, 227; 492 NW2d 795 (1992). "Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct could be found in a stated place to be searched." *Id.* When reviewing a decision to issue a search warrant, the reviewing court must read the search warrant and the affidavit in a common-sense and realistic

manner. *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992). Deference is afforded to the magistrate's decision because of the preference for searches conducted pursuant to warrants. *Id.* A reviewing court must only ensure that there is a substantial basis for the magistrate's conclusion that there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.* at 604.

An affiant must include in the affidavit facts within his knowledge and may not merely state conclusions or beliefs. *People v Bobby Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006). The affiant may not draw his or her own inferences, but rather must include statements that justify the drawing of any inferences by the reviewing magistrate. *Id.* Facts stated in an affidavit are sufficiently fresh when it can be presumed that the items sought remain on the premises to be searched or that criminal activity is continuing at the time the warrant is requested. *People v McGhee*, 255 Mich App 623, 636; 662 NW2d 777 (2003).

Where unnamed individuals supply information in a search warrant affidavit, the information is deemed sufficient to find probable cause if the magistrate could conclude that the unnamed individual spoke with personal knowledge and either that the individual is credible or the information is reliable. MCL 780.653(b); *People v Keller*, 270 Mich App 446, 448-449; 716 NW2d 311 (2006). Personal knowledge may be inferred from facts set forth in the affidavit. *Martin, supra* at 302.

Here, the affidavit discloses that an informant personally observed cocaine being sold at the location to be searched within 36 hours before the warrant was requested. The affidavit also contained information describing the informant's history as a drug informant during the past year, including his participation in over 40 controlled purchases, and indicated that the informant had supplied information on at least 20 other drug traffickers, which had been verified as accurate. The informant also provided a detailed description of the suspect involved. Because the facts provided by the informant indicated that he was an eyewitness to criminal activity, a magistrate could conclude that he spoke from personal knowledge. Additionally, the information describing the informant's past history of providing accurate information was sufficient to demonstrate his credibility and reliability. *People v Echavarria*, 233 Mich App 356, 367; 592 NW2d 737 (1999). The fact that the informant observed cocaine being sold at the premises within the previous 36 hours, together with the other information in the affidavit, provided a substantial basis for the magistrate to find that criminal activity was continuing at the time the warrant was requested. See, e.g., *People v Sardy*, 216 Mich App 111, 114; 549 NW2d 23 (1996); *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995).

Accordingly, because a motion to suppress would have been futile, defense counsel was not ineffective for failing to pursue such a motion. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Defendant also argues that resentencing is required because the trial court erroneously believed that the sentencing guidelines range for the underlying offense could be doubled because of defendant's status as a second-time drug offender. Defendant maintains that *People v Williams*, 268 Mich App 416, 423-431; 707 NW2d 624 (2005), which holds that the guidelines may be doubled when a defendant is sentenced as a second-time drug offender under MCL 333.7413(2), was wrongly decided. In this case, however, it is unnecessary to address defendant's argument that *Williams* was incorrectly decided. In denying defendant's motion for

resentencing, the trial court observed that it sentenced defendant to a minimum term within the sentencing guidelines range for the underlying offense, without doubling the guidelines, which it continued to believe was a proper sentence even if doubling was not permitted, and that it only increased defendant's maximum sentence in accordance with MCL 333.7413(2). Under these circumstances, defendant has failed to show that he is entitled to be resentenced.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff